

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CYAN CONTRACTING CORPORATION

Plaintiffs,

Civ. Act. No. 09-Civ-603 (LAK) (HBP)

- against -

NATIONAL GRANGE MUTUAL
INSURANCE COMPANY,
THE NEW YORK STATE DORMITORY
AUTHORITY

**CYAN’S REPLY TO
NATIONAL’S COUNTERCLAIM**

Defendants.

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Plaintiff Cyan Contracting Corporation (“Cyan”), by its attorneys King & King LLP, for its reply to defendant National Grange Mutual Insurance Company’s (“National’s”) counterclaim, responds as follows:

1. Cyan admits paragraph 1 of National’s counterclaim.
2. Cyan admits paragraph 2 of National’s counterclaim.
3. Cyan denies paragraph 3 of National’s counterclaim.
4. Cyan denies paragraph 4 of National’s counterclaim.
5. Cyan denies paragraph 5 of National’s counterclaim; except, Cyan admits that Cyan and National are parties to a civil action, NYSD Civ. Act. No. 07-cv-3749.
6. Cyan denies paragraph 6 of National’s counterclaim.
7. Cyan denies paragraph 7 of National’s counterclaim.
8. Cyan denies paragraph 8 of National’s counterclaim.

AS AND FOR THE FIRST AFFIRMATIVE DEFENSE

National’s claims are barred by res judicata, collateral estoppel, and/or issue preclusion.

AS AND FOR THE SECOND AFFIRMATIVE DEFENSE

National fails to state a claim for which relief can be granted by virtue of estoppel, laches, waiver, duress, and/or unclean hands.

AS AND FOR THE THIRD AFFIRMATIVE DEFENSE

National's damages were occasioned in whole or in part by National's own errors, breach of contract, neglect, and/or omissions.

AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE

National failed to mitigate its damages.

AS AND FOR THE FIFTH AFFIRMATIVE DEFENSE

National fails to state a claim upon which relief can be granted.

WHEREFORE, plaintiff Cyan respectfully requests that this Court enter judgment dismissing defendant National's counterclaims in all respects and granting Cyan judgment against National's counterclaim as follows:

- (a) Dismissing National's counterclaims; and,
- (b) Such other and further relief as this Court may deem proper.

Dated: February 18, 2009
Long Island City, N.Y.

KING & KING, LLP

By: /s/ Karl Silverberg
Karl Silverberg, Esq. (KS3075)

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